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RECEIVED

SEP 30 2014

MONT. P. S. COMMISSION

*Counsel for Republic Services of Montana*

**BEFORE THE MONTANA PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE PETITION OF  
BULL MOUNTAIN SANITATION, LLC  
FOR A DECLARATORY RULING

Docket No.: \_\_\_\_\_

**REQUEST OF REPUBLIC SERVICES  
FOR DEFERRAL OF  
DECLARATORY RULING  
PENDING DISTRICT COURT RULING**

COMES NOW Republic Services of Montana ("Republic") and requests that the Montana Public Service Commission ("PSC") defer any ruling on the referenced Petition until the District Court for the Fourteenth Judicial District, Musselshell County ("Court") has issued a determination and ruling in Docket No. DV-14-63, *Republic Services of Montana v. Bull Mountain Sanitation, L.L.C.*, on the interpretation of Mont. Code Ann. § 69-12-106(2).

1. Republic Services is a PSC-regulated Class D motor carrier authorized to haul in Musselshell County (PCN No. 1581)
2. On September 29, 2014, Republic's counsel received in the mail a copy of an *Amended Petition for Declaratory Ruling* ("Petition") filed with the PSC by Bull

Mountain Sanitation, L.L.C. (“Bull Mountain”). The Petition is asking the PSC for an interpretation of a portion of the exemption from Class D regulation found at Mont. Code Ann. § 69-12-102(1)(c) (cities, towns, and villages of under 500 persons).

3. In August of 2014, Republic communicated in writing to Bull Mountain its concern over Bull Mountain’s use of this specific exemption to Class D regulation and asked Bull Mountain to respond to Republic. While Republic was waiting to hear from Bull Mountain, on September 24, 2014, Republic received a copy of an initial petition for declaratory judgment submitted to the PSC by Bull Mountain.
4. Republic was advised the next day by Transportation Division staff that the PSC had rejected this petition for matters of form. On Friday, September 26, 2014, Republic filed a *Complaint for Injunctive Relief* (“Complaint”) in Musselshell County (Civil Cause No. DV-14-63) requesting the District Court to determine that Bull Mountain was exceeding the scope of any exemption in § 69-12-102 and to limit Bull Mountain’s hauling to within the scope allowed by law. A copy of the Complaint is attached hereto. The service of the Complaint on Bull Mountain is in process.
5. Republic wishes to apprise the Department and the PSC of this judicial docket in Musselshell County, and respectfully submits that the state District Court is the proper forum to resolve the legal issue of the interpretation of the statutory term “village,” which was raised by Bull Mountain in its Petition, for the following reasons:
  - a. The issue in both the District Court action and Bull Mountain’s Petition is the same – the meaning of the term “village” under § 69-12-102(1)(c).
  - b. While the PSC certainly has many areas of expertise, the meaning of the term “village” is a matter of straightforward statutory interpretation of a word or phrase, which is best determined by the District Court.
  - c. Whatever declaratory ruling the PSC were to make, either party may want to seek judicial review of the issuance of any injunction – and thus the District Court proceeding would likely be a more efficient forum for the PSC and the parties.
  - d. September 26, 2014 was the day on which not only the Bull Mountain Petition was accepted by the PSC staff, but also the date Republic’s Complaint was filed in Musselshell County.<sup>1</sup>
6. Republic is aware of the PSC’s May 3, 1993 decision in Docket T-93-33 DR to defer consideration of a declaratory ruling pending a decision by a District Court on the

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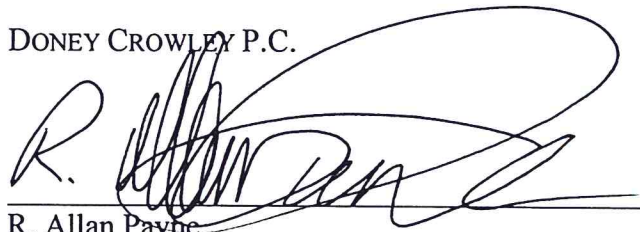
<sup>1</sup> Procedurally, Republic’s civil action was filed on the same day as the PSC apparently received the now-filed version of Bull Mountain’s petition for declaratory ruling via overnight mail. Republic was unaware until September 29, 2014 that Bull Mountain had filed its new petition after its initial petition was rejected.

same or similar issue of law. (*Grouse Mountain*). Although the Court later determined to defer to the PSC declaratory ruling involving the interpretation of the PSC's own "incidental transportation" policies, the logic used by the PSC in deferring to a pending District Court case applies here. Moreover, unlike the *Grouse Mountain* case involving incidental taxi service, the issue in the Bull Mountain Petition does not involve any of the several areas of the PSC's administrative expertise, but in essence simply requires the statutory interpretation of the word "village," which Republic believes has been in Montana transportation statutes under one form or another since 1923.

**WHEREFORE**, Republic requests that the PSC defer consideration of Bull Mountain's Petition until the District Court has rendered a ruling as to the scope of Bull Mountain's legitimate hauling in Musselshell County.

DATED this 30th day of September, 2014.

DONEY CROWLEY P.C.

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R. Allan Payne

Frank C. Crowley

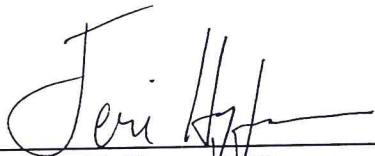
Jacqueline R. Papez

*Attorneys for Republic Services of Montana*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Request of Republic Services for Deferral of Declaratory Ruling Pending District Court Ruling* was served via email on this 30<sup>th</sup> day of September, 2014, upon the following:

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*Attorneys for Plaintiff Republic Services of Montana*

**MONTANA FOURTEENTH JUDICIAL DISTRICT COURT, MUSSELSHELL  
COUNTY**

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC doing business as REPUBLIC SERVICES OF MONTANA,  Plaintiff,  vs.  BULL MOUNTAIN SANITATION, L.L.C.,	Cause No.: <u>DV-14-63</u>  Judge: Randal Spaulding  <b>COMPLAINT FOR INJUNCTIVE RELIEF</b>
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COMES NOW Allied Waste Services of North America, LLC a Delaware limited  
liability company registered to conduct business in Montana as Republic Services of Montana  
and files this Complaint for injunctive relief pursuant to Mont. Code Ann. § 69-12-209(2) as  
follows:

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No. DV-14-63  
  
FILED this 26<sup>th</sup> day of  
Sept. 20 14  
Connie Mattfield  
Clerk of District Court  
  
By \_\_\_\_\_  
Deputy Clerk

### **NATURE OF ACTION**

1. This is an action for injunctive relief pursuant to Mont. Code Ann. § 69-12-209(2) to enjoin the illegal hauling of solid waste in Musselshell County by Bull Mountain Sanitation, L.L.C.

### **PARTIES**

2. Plaintiff Allied Waste Services of North America, LLC is a Delaware limited liability company registered to conduct business in Montana as Republic Services of Montana ("Republic"), which hauls solid waste in Musselshell County pursuant to Public Service Commission Class D Certificate of Public Convenience and Necessity No. 1581, Sub L. *See* Exhibit 1, attached hereto.

3. Defendant Bull Mountain Sanitation L.L.C. ("Bull Mountain") is a Montana limited liability company which conducts business hauling solid waste in Musselshell County, Montana.

### **JURISDICTION AND VENUE**

4. In this action, Republic seeks injunctive relief, as allowed under Mont. Code Ann. § 69-12-209, for injuries caused to Republic in Musselshell County due to business activities by Bull Mountain in Musselshell County. As such, this Court has jurisdiction over the matter, and Musselshell County is the proper venue for this action.

### **ALLEGATIONS AND CLAIM FOR INJUNCTIVE RELIEF**

5. Under Montana law, a solid waste hauler is not allowed to operate in a given area unless it possesses a Class D certificate of public convenience and necessity issued by the Montana Public Services Commission ("PSC"), unless an exemption applies. *See* Mont. Code Ann. § 69-12-314.

6. Pursuant to its permit issued by the PSC, Republic is authorized to haul ashes, trash, waste, refuse, rubbish and garbage throughout Musselshell County. *See Exhibit 1, attached hereto.*

7. Bull Mountain is required to possess, but does not possess, a Class D certificate of public convenience and necessity issued by the PSC authorizing it to haul solid waste, and no statutory exemption for such requirement, as provided under Mont. Code Ann. § 69-12-102, applies to the solid waste hauling conducted by Bull Mountain.

8. Despite not possessing a Class D certificate of public convenience and necessity, Bull Mountain is hauling solid waste throughout Musselshell County, thereby injuring Republic.

9. Pursuant to Mont. Code Ann. § 69-12-401, it is unlawful for a person or entity to transport property on any public highway, except in accordance with the provisions of the Motor Carrier statutes found at Title 69, Chapter 12, Mont. Code Ann.

10. Under Mont. Code Ann. § 69-12-209(2), the Court may issue an injunction or other proper process to restrain Bull Mountain from violating the Motor Carrier statutes found at Title 69, Chapter 12, Mont. Code Ann.

11. Bull Mountain is violating the Motor Carrier statutes by hauling solid waste throughout Musselshell County without possessing a Class D certificate of public convenience and necessity issued by the PSC, and therefore Bull Mountain should be enjoined from all such activity.

#### **PRAYER FOR RELIEF**

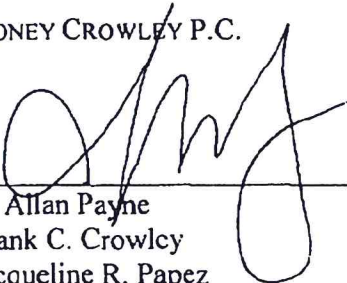
WHEREFORE, Republic prays for judgment against Bull Mountain as follows:

1. For a judgment that Bull Mountain is operating in violation of the provisions of the Motor Carrier statutes found at Title 69, Chapter 12, Mont. Code Ann.

2. For permanent injunctive relief enjoining Bull Mountain from hauling in Musselshell County without the requisite Class D certificate of public convenience and necessity issued by the PSC;
3. For Republic's damages, attorneys' fees and costs as allowed by law and in equity; and
4. For any and all other proper process or relief that the Court deems just and proper.

DATED this 26th day of September, 2014.

DONEY CROWLEY P.C.

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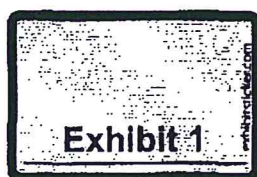
R. Allan Payne

Frank C. Crowley

Jacqueline R. Papez

*Attorneys for Plaintiff Republic Services of  
Montana*

**August 14, 2014**  
**INTRASTATE CARRIERS AUTHORITY**



**PSC NO. 1544**

**RAYMOND E. LASLOVICH dba LASLOVICH TRUCKING**  
**% Joan Ungaretti, 2400 43<sup>rd</sup> Street, Missoula, Montana 59803**

Class C - Property within the City of Anaconda, Montana, and to or from points tributary thereto, but within a distance not exceeding twenty-five (25) miles in any direction from said city.

Limitations: Transportation of ashes, trash, waste, refuse, rubbish and garbage is prohibited.

**PSC NO. 1581**

**Allied Waste Services of North America LLC dba Republic Services of Montana**  
**1501 Rodgers, P.O. Box 8449, Missoula, Montana 59807**

- SUB B Class D - Garbage and refuse from the Missoula County line east to the City of Missoula, Montana, by Interstate 90 and tributaries thereof, serving all intermediate and off-route points including Frenchtown and Huson, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB C Class D - Garbage and refuse between Clearwater Junction and Missoula, Montana, via State Highway 200, serving all intermediate and off-route points; and between Beavertail Hill and Missoula, Montana, via I-90, serving all intermediate and off-route points. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB D Class D - Garbage and refuse in Frenchtown, Montana and intermediate points and places along Interstate 90 and Highway No. 10 West, all situated within Missoula, County, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB E Class C - Car bodies for disposal in Frenchtown, Montana and intermediate points and places along Interstate 90 and Highway No. 10 West, all situated within Missoula County, Montana.
- SUB F Class D - Refuse and garbage in Missoula County starting at the Y junction intersection west of Missoula (Highway 93 goes north and Highway 10 continues west), serving all points one mile on each side of Highway 93 towards the Lake County Line. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.  
Limitations: Service shall include all points one mile on each side of Highway 93 towards the Lake County Line to and excluding the community of Evaro and not beyond.

- SUB I     Class C - Property in the City of Laurel, Montana, and to or from points immediately tributary thereto.  
Limitations: The transportation of property (except household goods) between points served by rail carriers, or between points served by a motor carrier operating between fixed termini or over a regular route, is prohibited. Transportation of ashes, trash, waste, refuse, rubbish and garbage is prohibited.
- SUB K     Class D - Garbage, refuse, waste and other disposable materials between all points and places in Yellowstone County, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.  
Limitations: Transportation within Laurel, Montana, and a five-mile radius thereof is prohibited.
- SUB L     Class D - Ashes, trash, waste, refuse, rubbish and garbage between all points and places in Musselshell County, servicing the Musselshell Disposal District utilizing roll-off and roll-on containers, and further transporting refuse to a certified landfill in Billings, Montana.
- SUB N     Class D - Garbage and refuse between all points and places within Big Horn County, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB O     Class D - Garbage, refuse, waste and other disposable materials, in the City of Billings, Montana and within a radius of fifty (50) miles of said city. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.  
Limitations: Transportation in Columbus, Montana and a ten (10) mile radius thereof is prohibited.
- SUB P     Class D - Solid waste (defined as garbage, refuse, old car bodies) between all points and places within Carbon County, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB S     Class D - Ashes, trash, waste, refuse, rubbish and garbage, within the town of Columbus, Montana, and to and from points and places tributary thereto, but within a distance not exceeding fifty (50) miles in any direction from Columbus. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.  
Limitations: Transportation of petroleum products in bulk, and heavy mining machinery and equipment is prohibited. Service is not authorized between points and places served by rail carriers, by Class A and Class B motor carriers operating over U.S. Highway 10 and between Columbus and Absarokee over unnumbered county roads.

- SUB Z     Class D - Garbage and recyclables from the Seeley Lake Refuse District Transfer Station or stations to licensed landfills and recycling centers.  
Limitations: Transportation is restricted to roll-off box service and transfer trailer and recycling service.
- SUB AA    Class D - Garbage in roll off box service and/or transfer trailer service from the Powell County Refuse District in Powell County to licensed landfills.  
Limitations: Transportation within the City of Deer Lodge, Montana and points within a ten (10) mile radius thereof is prohibited.
- SUB BB    Class D - Garbage serving the town of Lolo, Montana, and a 25 mile radius thereof, including the city of Missoula, Montana, excluding, however, all the area south of the Missoula-Ravalli County line; carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB CC    Class D - Garbage between all points and places in Granite County using transfer sites for roll-off boxes. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB DD    Class D - Garbage between all points and places within a thirty-five (35) mile radius of Absarokee, Montana. Carrier is authorized to transport authorized commodities to certified landfills from territory authorized.  
Limitations: Transportation within Columbus, Montana, is prohibited.
- SUB HH    Class D - Refuse, meaning all putrescible and nonputrescible solid wastes, garbage, rubbish, street cleanings, dead animals, yard clippings, solid market wastes, solid industrial wastes, liquid wastes and any other abandoned wastes, between all points and places in Treasure county, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB II     Class D - Garbage and refuse between all points and places in the following counties: Gallatin, Madison, Park, and Sweet Grass. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB JJ     Class D - Garbage and solid waste between points in Broadwater County situated within an eight (8) mile radius of Three Forks, Montana.
- SUB KK    Class D - Garbage and refuse between all points and places in Broadwater County. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.  
Limitation: (1) Transportation within a 35-mile radius of Helena, Montana is prohibited. (2) Transportation within the City of Townsend is prohibited.

- SUB LL Class D - Garbage in the City of West Yellowstone, Montana and within a radius of 25 miles of said city. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB MM Class D - Ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter within the town of Ronan, Montana, and between all points and places within a fifty (50) mile radius thereof.  
Limitations: Transportation is prohibited within a three and one half mile (3.5 mile) radius of the junction of U.S. Highway 90 and U.S. Highway 93 (approximately 3.5 miles south of Evaro hill), with the EXCEPTION of movements which originate in that area and terminate in Ronan, Montana, or originate in Ronan and terminate in the 3.5 mile radius area. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB NN Class D - Garbage and refuse, in the town of Creston, Montana and points intermediate between Big Fork, Montana and Creston, Montana; and between Big Fork and Lakeside, Montana on the county road and U.S. Highway 93; and serving the United States Air Force radar base located near Lakeside, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB OO Class D - Garbage and refuse, between all points and places from Bigfork, Montana to the Missoula County line down Seeley Swan Highway by way of Highway 326 and Highway 209. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB PP Class D - Garbage, brush and solid waste within the City of Hot Springs, Montana and a twenty (20) mile radius thereof.  
Limitations: Transportation is prohibited within the Town of Plains, Montana and a ten (10) mile radius thereof.

- SUB QQ Class D – Garbage between all points and places in Sanders County. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized. LIMITATIONS: (1) Transportation is limited to materials from demolition or construction sites. (2) Transportation within the town of Noxon, Montana and a twenty (20) mile radius thereof is limited to service provided using roll-off containers of greater than ten (10) cubic-yard capacity. (3) Transportation to or from any points within fifty (50) miles of Ronan, Montana is prohibited; EXCEPT that transportation to or from any points within ten (10) miles of Paradise, Montana is permitted. (4) Transportation to or from any points within twenty (20) miles of Hot Springs, Montana is prohibited; EXCEPT that transportation to or from any points within ten (10) miles of Plains, Montana is permitted.
- SUB RR Class D - Garbage, rubbish and haulage of all types of solid waste between all points and places in Granite County, Montana. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.  
Limitations: 1) Transporting garbage, rubbish, and haulage of all types of solid waste, within the town of Drummond, Montana, and within a twenty (20) mile radius thereof is prohibited. 2) Transportation of roll-off containers from transfer sites is prohibited.
- SUB SS Class D - Garbage and refuse serving Seeley Lake and a ten (10) mile radius in all directions. Carrier is allowed to transport authorized commodities to certified landfills from territory authorized.
- SUB TT Class D - Garbage and refuse between points and places within five (5) miles of State Highway 283 extending north from the Clearwater Junction (junction of Highway 83 and Montana 200) to the Missoula Lake County Line on the one hand, and to the nearest sanitary landfill dump, certified by the appropriate governmental agency, on the other hand.  
Limitations: No service is authorized herein from points within a three hundred (300) yard radius of the Clearwater Junction (junction of Highway 83 and Montana 200).

**PSC NO. 1582**

**LUX TRANSFER & STORAGE, INC., a Montana Corporation  
145 Simmental Way, Bozeman, Montana 59715**

Class B - Household goods (as defined by Commission) between all points in the State of Montana over any public highways.

- SUB A Class C - Property within the City of Bozeman, Montana, and to or from points tributary thereto, but within a distance not exceeding fifty (50) miles in any direction from said city.  
Limitations: Transportation of ashes, waste, trash, refuse, rubbish and garbage is prohibited.